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BRISTOL BAY: Issa seeks EPA documents on watershed study, possible mine-permit veto (Tuesday, May 22, 2012)

Manuel Quinones, E&E reporter

House Oversight and Government Reform Chairman Darrell Issa is investigating whether U.S. EPA's study of a proposed gold and copper mine in southwestern Alaska might be aimed at stopping developers before they apply for project permits.

The California Republican and Rep. Jim Jordan (R-Ohio), chairman of the Subcommittee on Regulatory Affairs, have given EPA until later this week to turn over documents related to its assessment of Alaska's Bristol Bay area.

"It appears that the Environmental Protection Agency is considering using an unprecedented and legally questionable interpretation of the Clean Water Act to preemptively veto permits for the Pebble project," the lawmakers wrote to the agency earlier this month.

EPA released a draft assessment of the Bristol Bay watershed Friday, saying a large mine would likely impair miles of waterways and harm aquatic life, most notably a thriving salmon fishery (E&ENews PM, May 18).

Region 10 Administrator Dennis McLerran emphasized the draft was not a regulatory action, but EPA has never closed the door on a possible pre-emptive veto of Clean Water Act permits for the mine. Pebble Limited Partnership, the mine developer, said it may submit plans for further review later this year.

Mining industry officials and Alaska politicians -- notably, state Attorney General Mike Geraghty and U.S. Sen. Lisa Murkowski (R) -- have questioned whether EPA has legal authority to conduct the watershed assessment.

Issa and Jordan are asking for documents related to EPA's assessment, its impact on other development and the agency's intentions for the document, including justification for a possible veto.

"EPA has clearly stated on its website that it has the authority to take such actions but will not explain how it believes it can legally do so," they wrote, asking why the agency does not wait for permitting to start.

"Does EPA," they asked, "no longer trust [National Environmental Policy Act] analysis?"

In a preliminary response last week, EPA Assistant Administrator Arvin Ganesan said it was too soon to discuss the merits of a veto under Section 404 of the Clean Water Act.

"I want to emphasize that EPA has not initiated a [veto] review, so any specific question on the impacts of a [veto] action is purely hypothetical," he wrote.

EPA's critics point to U.S. District Court for the District of Columbia Judge Amy Berman Jackson's recent ruling that scrapped EPA's first retroactive veto for a mountaintop coal-mining project in West Virginia. EPA is appealing that decision, and, either way, agency leaders say the Alaska case is different. Pebble would be the agency's first pre-emptive veto.

"The plain language of the statute and the Agency's longstanding regulations clearly authorize the Administrator to prohibit or restrict use of a defined area of the waters of the U.S. prior to the submittal of an application for a [Clean Water Act] Section 404 permit," Ganesan wrote.

The veto option is backed by environmentalists and lawmakers skeptical of the mine. Sen. Maria Cantwell (D-Wash.) is the first senator to support a Clean Water Act veto if the agency deems it necessary.

"The watershed assessment released today is an important step towards protecting wild Bristol Bay salmon and the thousands of Washington state jobs that rely on them," Cantwell said in a statement. "This draft report validates the concerns of the Alaska and Washington fishing fleets that the proposed Pebble Mine could have devastating impacts to the Pacific Northwest's maritime economy."

But Alaska officials appear poised to defend the state's right to help decide the fate of local development from what they deem federal intrusion. "The EPA has clearly overreached with this unprecedented process," said a statement from Gov. Sean Parnell's (R) office. "Without a specific proposal, the EPA cannot evaluate the potential impacts or risks from the project."

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